Supreme Court, U.S.
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No. 95- _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

JOHN HENRY SHOFFEITT,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

On Petition for a writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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PETITION FOR A WRIT OF CERTIORARI

Submitted By
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19 AP

QUESTIONS PRESENTED

1. Does this Court's ruling in Cox vs. Louisiana, 379 US 559 and Raley vs. Ohio, 360 US 423 hold for the proposition that only prosecuting government could mislead the defendant as to the illegality of his conduct to warrant a defense of entrapment by estopple ?

2. Should a defendant be entitled to separate instructions specifically charging the jury on his theory of defense, when his theory of defense has a legal and evidentiary foundation?

3. Can a defendant rely on the theory of entrapment by estopple when State Officials and Federal Appeals Court's misinterpreting of federal laws could have mislead the defendant to believe in good faith that his conduct was not against any laws of the United States, until their interpretations have been explicitly changed by a ruling from this Court, to warrant requested jury instructions on his theory of defense ?

LIST OF PARTIES AND AFFILIATES

1. Cathy Morris Alterman, Attorney for Appellant;

2. Janis Gordon, Assistant United States Attorney;

3. Bruce S. Harvey, Attorney for Appellant;

4. Honorable William C. O'Kelley, Judge, United States District Court;

5. Douglas McDonald, Trial attorney for Appellant;

6. John Henry Shoffeitt, Petitioner;

7. United States of America.

_____

John Henry Shoffeitt, Pro se

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

No. 95 _____

JOHN HENRY SHOFFEITT,
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vs .

UNITED STATES OF AMERICA
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On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

Petition For A Writ Of Certiorari

OPINION BELOW

The decision of the court of appeals in Shoffeitt vs. United States, (App. A, pp. 1a-2a, infra) is not reported. Petition for rehearing denied, (App. B. pp. 1).

JURISDICTION

The decision of the court of appeals in the instant case was rendered on October 17, 1995. Petition for rehearing or suggestion for rehearing was denied on January 26, 1996. The Eleventh Circuit Court of Appeals had jurisdiction pursuant to Title 28 U.S.C. § 1291. This court has jurisdiction pursuant to Title 28 U.S.C. § 1254.

STATUTES INVOLVED

Section 922 (g) of Title 18 provides as follows:

(g) It shall be unlawful for any person –

(1) who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

(2) who is a fugitive from justice;

(3) who is an unlawful user of or addicted to any controlled substance (as defined in Section 102 of the Controlled Substance Act (21 U.S.C. 802);

(4) who has been adjudicated as a mental defective or has beencommitted to a mental institution;

(5) who, being an alien, is illegally or unlawfully in the United States;

(6) who has been discharged from the Armed Forces under dishonorable conditions; or

(7) who, having been a citizen of the United States has renounced his citizenship.

STATEMENT

Introduction

This petition brings before this Court an issue of Federal and State law that the Court of Appeals has no guidance of the issues herein. The decision by this court in, ***Cox vs. Louisiana***, 379 U.S. 559, 85 S.Ct. 476, 13 L Ed 2d 487 (1965); and ***Raley vs Ohio***, 360 U.S. 423, 79 S.Ct. 1257, 3 L Ed 2d 1344 (1959), does not address the interpretation of one law enforcement entity interpreting criminal statute of the other law enforcement entity, such as Federal vs. State criminal liability, to warrant requested jury instruction as entrapment by estopple.

STATEMENT OF RELEVANT FACTS

On June 2, 1993 in the United States District Court for the Northern District of Georgia, Gainesville Division, the petitioner was indicted for a violation of 21 U.S.C. § 861 and 21 U.S.C. § 846. A superseding indictment was filed against petitioner on July 7, 1994, charging him with additional violation of Title 18 U.S.C. § 922 (g)(l), i.e. possession of a firearm by a convicted felon.

Petitioner entered a plea of not guilty to all counts in the indictment and proceeded to trial. Trial commenced before a jury on February 1, 1994. Petitioner requested an instruction on entrapment by estopple. The government conceded that there was sufficient evidence to warrant an

entrapment instruction. The government then requested an instruction that a firearm permit is not a defense to a 922 (g) charge. On the morning of closing arguments, petitioner's counsel made an incomplete request to withdraw either the entrapment charge or the equal access charge. The district court promised however, in response to a clarification request by the government, that, "regardless", if entrapment was argued, an entrapment instruction would be given to the jury. Petitioner argued good faith reliance on the State of Georgia in issuing the firearm permit and licensing him to become a bondsman. No entrapment instruction was given. The district court did however instruct the jury on the government's theory of the case by charging that a firearm permit issued by the State or county was no defense to the firearm charge.

When the jury was unable to reach a verdict on the drug charges, a mistrial was declared as to those charges only. The jury found the petitioner guilty on count 14, the firearm possession charge. Petitioner subsequently entered a plea of guilty to one count of possession of cocaine with intent to distribute. Petitioner was sentenced to 33 months incarceration and is presently incarcerated in the Atlanta Federal Prison Camp.

THE ELEVENTH CIRCUIT'S OPINION

The panel, Judges, Kravitch, Hatchett and Cox, in its per curiam opinion, found Petitioner's felony conviction was

a federal conviction, and therefore he had no viable entrapment by estoppel defense based upon the conduct of Georgia officials. **See *Beecham vs. United States***, 128 L. Ed 2d 383 (1994); ***United States vs. Bruscantini***, 761 F. 2d 640 (llth. Cir. 1985). The instructions the court gave, therefore, were not erroneous, and the court did not err in declining to instruct the jury as Shoffeitt (petitioner) requested.

REASONS FOR GRANTING THE WRIT

This Court's decision in ***Cox vs. Louisiana***, 379 U.S. 559 (1965); and ***Raley vs. Ohio***, 360 U.S. 423 (1959) does not address whether a person could rely on state law enforcement's interpretation of a federal law, that such conduct is not against the law, in order to pursue a defense of entrapment by estopple. This Court's ruling in ***Cox*, supra**, relying on it's earlier ruling in ***Raley*, supra**, that Due Process Clause prevented conviction of a person for refusing to answer questions of a state investigating commission when they relied upon assurances of the commission, either expressed or implied, that they had a privilege under state law to refuse to answer, though in fact this privilege was not available to them.

In the instant case, the petitioner gave good faith reliance on state official's issuance of his firearm permit and their interpretation of federal law to warrant the reliance on his defense of entrapment by estopple to warrant the requested instructions.

Not only were the actions of the State of Georgia relied on by the petitioner, there were published appeals and court rulings that drew nationwide attention, that allowed convicted felons to possess firearms after their release from any supervision; i.e. ***United States vs. Geyler***, 932 F. 2d 1330 (9th. Cir. 1991); ***United States vs. Edwards***, 946 F. 2d 1347 (8th. Cir. 1991); ***United States vs. Swanson***, 947 F. 2d 914 (llth. Cir. 1991); the aforementioned cases dealt with the restoration of civil rights. See Title 18 U.S.C. § 921 (a)(20). In ***United States vs. Geyler*, supra**, the ruling dealt with persons being previously convicted of a federal crime and the Ninth Circuit found that 18 U.S.C. § 921 (a)(20) applied and vacated the conviction.

The petitioner was indicted and tried on February 1, 1994, before this Court rendered it's decision in ***Beecham vs. United States***, 128 L. Ed 2d 383 (1994), that foreclosed the restoration of civil rights defense, when the previous conviction resulted in a federal conviction. ***Beecham*, supra,** was decided on May 16, 1994, some months after the petitioner was arrested for the charged conduct. Therefore, the petitioner could have reasonably believed that the actions from the State of Georgia and the Appeals Courts opinions were correct and still in effect at the time of his criminal conduct, to warrant the requested instructions of entrapment by estopple.

The Ninth Circuit Court of Appeals, found in ***United States vs. Albertini***, 830 F. 2d 985 (9th. Cir. 1987), a case close to point. "A peace protester while in conduct of leaflet-

ting navalbase had been tried in court and vindicated on appeal could rely upon appellate court's decision in repeating the same conduct after receiving the appellate judgment, before the supreme Court's reversal of that decision. U.S.C.A. Const. Amend. 5; U.S.C.A. Const, Art. 1, § 9, cl. 3; art 1, § 10, cl 1."

Not only did the State of Georgia issue the petitioner a permit for a firearm, the published Court of Appeals opinions in the Eleventh Circuit, in a published opinion, ***United States vs. Swanson*, supra,** found that the language in Title 18 U.S.C.§ 921 (a)(20), **"unless expressly provides that the person may not ship, transport, possess, or receive firearm"** the federal law does not apply. The issuance of the firearm permit, clearly shows that the petitioner was not restricted by the State, and the federal appeals Court's opinion clearly so held that he was not under any disability. Until this Court's opinion in ***Beecham*, supra** the petitioner could so rely on the earlier rulings, to reasonably believe his conduct was not against the law, ***Albertini,* supra**, and his theory of defense, warranted the requested instructions entrapment by estopple.

The Eleventh Circuit Court of Appeals, relied upon ***United States vs. Bruscantini***, 761 F- 2d 640 for the proposition that the actions of a state judge and prosecutor who had told a defendant that he was not a convicted felon after he entered a plea of nolo did not establish a valid estoppel defense.

The ruling in ***Bruscantini,* supra,** dealt with prior firearm laws, Title 18 U.S.C. § 922 (b) (1982). At that time this court's ruling in ***Dickerson vs. Dew Banner Institute***, 460 U.S. 310 was good law. Since the new firearm amendment, Firearm Owner Protection Act, Pub. L. 99-508, effectively overruled ***Dickerson,* supra**.

The rule on **Cox** and **Raley** is a narrow exception to the general principle that ignorance of the law is no defense. It was prompted by this court's observation that permitting the government to prosecute individuals who reasonably rely upon government's interpretation of the law would constitute a kind of entrapment.

The lower court has interpreted **Cox** and **Raley** for narrow proposition, that the benefit of estoppel defense is that it encourages government officials to better know and articulate the law, that benefit is not present where application of the defense would penalize the wrong government; the government that prosecuted the defendant rather then the government that mistakenly and misleadingly interpreted the law. This interpretation would be correct, if, federal law allowed only for prosecution of Federal crimes and State law allowed for only prosecution of state crimes. But Congress in its legislation of the Comprehensive Drug Abuse Prevention and Control Act of 1970 enacted federal laws that corresponded with laws of the States. This is more apparent in the laws concerning firearms. Congress has become more aware of this, by its legislation of the Firearm Owner's Protection Act, Pub. L. 99-308 when Congress

allowed the states to determine the status of their felons for purposes of their firearm laws. Title 18 U.S.C. 921 (a)(20). Moreover, the inclusion in the statute of § 921, that allowed states to determine the status of their felons, could not have been accidental and Congress was certainly aware of it. See Special Project, **The Collateral Consequences of a Criminal Conviction, 23 Vand. L. Rev. 929, 1143 (1970).**

The issue before this court, is not whether the petitioner's rights were restored under § 921 (a) (20), but whether the petitioner could have reasonably relied on state official advice that he could legally possess a firearm, to warrant a requested instruction of estopple by entrapment. Petitioner's total theory of his defense was based upon the issuance of the firearm permit by the state. "It is elementary law that the defendant in a criminal case is entitled to have presented instructions relating to a theory of defense for which there is **any foundation** in the evidence". ***Perez vs. United States***, 297 F. 2d 12 (5th. Cir. 1961) "The defendant is entitled to a separate instruction specifically charging the jury on his theory of defense if the theory has legal and evident-iary foundation". ***United States vs. Silverman***, 745 F. 2d 1586 (11th. Cir. 1984) Surely, petitioner was entitled to an instructions that related to his only theory of defense.

The petitioner had been issued a firearm license, and licensed to act as a bondsman with the full knowledge of the officials of the State of Georgia. Whether he reasonably could have believed that he had been relieved of his firearm disability was a fact for the jury; a fact which the jury

could not address without the necessary guidance (jury instruction from the court) - to frame the question. Therefore, the petitioner should be entitled to a new trial with instructions that an entrapment charge be given and necessary for a fair trial.

The petitioner respectfully prays that this honorable court will grant certiorari to revisit its earlier ruling in **Cox** and **Raley, supra**, to allow consideration of the defense of entrapment by estopple when State Officials and Federal Appeals Court's misinterpretations of federal laws, could mislead a defendant to believe in good faith that his conduct is not against any laws of the United States, until their interpretations has been explicitly changed by a ruling from this Court, to warrant requested jury instructions as entrapment by estopple.

CONCLUSION

For the foregoing reasons, the writ of certiorari should be granted.

Respectfully submitted

John Henry Shoffeitt, Pro se
Reg. No. 43933-019
P.O. Box 150160
Atlanta, Georgia 30315

CERTIFICATE OF SERVICE

I hereby certify that I have caused on this 10th day of May, 1996, a copy of the foregoing to be sent by United States mail to the Solicitor General' s office, 10th. & Constitutional Ave. Washington, D.C. 20530.

App. A, pp. 1a

[Filed October 17, 1995]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 94-8646
Non-Argument Calendar

D. C. Docket No. 2:93-cr-013-1-WCO

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
versus
JOHN HENRY SHOFFEITT,
Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Georgia

(October 17, 1995)

Before KRAVITCH, HATCHETT and COX, Circuit Judges.

PER CURIAM:

John Henry Shoffeitt was convicted, following a jury trial, for being a convicted felon in possession of a firearm in violation of 18 U.S.C. S 922(g). He appeals.

Shoffeitt contends that the trial court erred in failing to give his requested jury instruction on entrapment by estoppel. Construed liberally, Shoffeitt's brief also asserts that the trial court erred in instructing the jury that a firearms permit issued by a state or county agency is no defense to the offense charged. (Appellant's Br. at 24.)

Shoffeitt's felony conviction was a federal conviction, and therefore he had no viable entrapment by estoppel defense based upon the conduct of Georgia officials. See Beecham v. United ___ U.S. _____, 114 S. Ct. 1669 (1994); United States v. Bruscantini, 761 F.2d 640 (llth Cir. 1985). The instruction the court gave, therefore was not erroneous, and the court did not err in declining to instruct the jury as Shoffeitt requested.

AFFIRMED.

United States Court of Appeals
FOR THE ELEVENTH CIRCUIT

No. 94-8646
Non-Argument Calendar
D.C. Docket No. 2:93-cr-013-B
[Filed October 17, 1995]

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JOHN HENRY SHOFFEITT,

Defendant-Appellant.

On Appeal from the United States District Court for the Northern District of Georgia

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Before: KRAVITCH, HATCHETT, and COX, Circuit Judges.

JUDGMENT

This cause came to be heard on the transcript of the record from the United States District Court for the Northern District of Georgia, and was taken under submission by the Court upon the record and briefs on file, pursuant to Eleventh Circuit Rule 34-3;

UPON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the judgment of conviction of the said District Court in this cause be and the same is hereby AFFIRMED.

Entered: October 17, 1995
For the Court: Miguel J. Cortez, Clerk
By: Matt Davidson
Deputy Clerk

ISSUED AS MANDATE: 2-7-96

App B, pp2b

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 94-8646

[Filed January 26, 1996]

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
versus
JOHN HENRY SHOFFEITT,
Defendant-Appellant.

On Appeal from the United States District Court for the Northern District of Georgia

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ON PETITION(S) FOR REHEARING AND SUGGESTION(S) OF REHEARING EN BANC

(Opinion _____, 11th Cir., 19____, ___F.2d_____)

Before: KRAVITCH, HATCHETT, and COX, Circuit Judges.

PER CURIAM:

The Petition (s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion (s) of Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

Phyllis Kravitch
UNITED STATES CIRCUIT JUDGE

ORD-42
(6/95)